

1 BOARDS AND COMMISSIONS

2 Board of Licensure for Massage Therapy

3 (Amendment)

4 201 KAR 42:050. Complaint procedure and disciplinary action.

5 RELATES TO: KRS 309.351, 309.355(1), (2), (6), 309.362

6 STATUTORY AUTHORITY: KRS 309.355(3)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the board
8 to regulate the practice of massage therapy. KRS 309.355(2) requires the board to in-
9 vestigate every alleged violation and take appropriate action. This administrative regula-
10 tion establishes the procedure for filing a complaint and the action to be taken by the
11 board on a complaint and disciplinary action of a licensee or applicant in violation of
12 KRS 309.351 or 309.362.

13 Section 1. Definitions. (1) "Complaint committee" means a committee of the board
14 that:

15 (a) Reviews an initiating complaint; and

16 (b) 1. Recommends dismissal or further investigation of the complaint; or

17 2. Determines the existence of sufficient evidence to bring a formal complaint.

18 (2) "Formal complaint" means a formal administrative pleading authorized by the board
19 that sets forth a charge against a licensee or applicant and commences a formal disci-
20 plinary proceeding under KRS Chapter 13B.

21 (3) "Initiating complaint" means a written complaint alleging a violation of KRS 309.350

through 309.364.

(4) "Respondent" means the person against whom an initiating complaint or formal complaint has been made.

Section 2. Initiating Complaint. (1) A complaint may be initiated by:

(a) An individual;

(b) A state or government agency;

(c) Another member of the massage therapy profession; or

(d) The board.

(2) An initiating complaint shall be made in writing to the board and received in the board office.

(3) The board may conduct an investigation on its own initiative, without receipt of a complaint, if the board has reason to believe that there may be a violation of KRS 309.350 through 309.364, or 201 KAR Chapter 42.

(4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid reason for an initiating complaint~~[The complaint shall be submitted on a Form to File a Complaint or Unlicensed Activity Report.]~~.

(5) Any complaint shall be in writing, identify the complainant, including name and contact information, and contain specific details regarding the complaint. Complaints without the required information will not be processed.

Section 3. Procedure Upon Receipt of Initiating Complaint. (1) Upon receipt of the initiating complaint, the board office shall send a copy of the initiating complaint to the respondent at the respondent's last address of record with the board.

(2) The respondent shall file a response to the initiating complaint with the board within

1 twenty (20) days after the board mails the initiating complaint to the respondent.

2 (3) The allegations in an initiating complaint shall be considered true if the respondent
3 fails to respond to the initiating complaint in a timely fashion.

4 ~~[(4) The board shall use the procedures established in this subsection to redact an initi-~~
5 ~~ating complaint.~~

6 ~~(a) A copy of an initiating complaint may be redacted of personal names, personal iden-~~
7 ~~tification numbers, and personal contact information upon recommendation of the com-~~
8 ~~plaint committee and consent by majority vote of the full board. The board shall keep~~
9 ~~the original initiating complaint free of redactions and store the document in the com-~~
10 ~~plaint case file.~~

11 ~~(b) The board may send a redacted copy of an initiating complaint to the respondent to~~
12 ~~meet the requirements of subsection (1) of this section. The original initiating complaint~~
13 ~~that is free of redactions may be viewed by the respondent upon written request submit-~~
14 ~~ted to the board. The original copy of the initiating complaint that is free of redactions~~
15 ~~shall not be released to the respondent or the public until final disposition of the matter.]~~

16 Section 4. (1) The complaint committee shall:

17 (a) Review the initiating complaint and the response filed by the respondent at its next
18 meeting; and

19 (b) Recommend one (1) of the following options to the board at the board's next meet-
20 ing:

21 1. Dismissal;

22 2. Further investigation;

23 3. Issuance of a formal complaint; or

1 4. Referral to another government agency.

2 (2) A complaint committee member having any known conflict of interest shall be
3 recused from the matter and disclose the existence of the conflict in a regular board
4 meeting.

5 Section 5. Board Action upon Recommendation of Complaint Committee. At the
6 board's next meeting following review by the complaint committee, the board shall re-
7 view the committee's recommendations and shall accept or reject the recommendations
8 in whole or in part.

9 Section 6. Dismissals. The complainant and respondent shall be notified if a case is
10 dismissed.

11 Section 7. Investigations. (1) If investigation is warranted, the board shall appoint one
12 (1) of its members or an agent or representative of the board to conduct an investigation
13 of the complaint.

14 (2) In its investigation, the board may be assisted by:

15 (a) Board staff;

16 (b) A board agent; or

17 (c) The Office of the Attorney General.

18 Section 8. Formal complaints. If the board finds that sufficient evidence exists to file a
19 formal complaint, the board shall:

20 (1) Resolve the case informally by agreed order; or

21 (2) File a formal complaint, in accordance with KRS Chapter 13B.

22 Section 9. Settlement by Informal Proceedings. (1) The board, through counsel, may
23 enter into informal discussions or negotiations with the respondent for the purpose of

1 appropriately dispensing with the matter.

2 (2) An agreed order or settlement reached through informal proceedings shall be ap-
3 proved by the board and signed by the chair of the board, the respondent, and the re-
4 spondent's attorney. A copy shall be placed in the licensee's file and a copy shall be
5 mailed to the complainant.

6 (3) The board may employ mediation as a method of resolving the matter informally.

7 Section 10. Procedures for Disciplinary Hearings. (1) All procedures for disciplinary
8 hearings shall conform to KRS Chapter 13B.

9 (2) Testimony to be considered by the board, hearing panel, or hearing officer, if any,
10 may be taken by deposition. A party or witness may be allowed to testify by deposition,
11 rather than attend the hearing, upon a showing of inability to attend and a showing that
12 other parties shall have an opportunity to cross-examine at the deposition. The presid-
13 ing officer or hearing officer, if any, shall rule upon motions to allow testimony to be
14 considered by deposition, subject to review and approval by the board.

15 (3) The presiding officer or hearing officer, if any, may order that at least five (5) days
16 prior to the hearing, each party shall file a summary of each witness' expected testimo-
17 ny.

18 (4) The board may request recovery of administrative costs and fees incurred by the
19 board in processing, investigating, or administering a complaint to be paid by a re-
20 spondent. The request shall be submitted by motion to an administrative hearing officer
21 assigned under KRS 13B.080 to preside over a KRS Chapter 13B hearing of the com-
22 plaint. The request may also be made to a circuit court judge presiding over an action
23 for injunction filed by the board pursuant to KRS 309.355(6).

1 Section 11. Final Disposition. Upon reaching a decision, the board shall notify the re-
2 spondent in writing, by certified mail or personal service, of its final disposition of the
3 matter and the complainant shall be notified by regular mail.

4 Section 12. Incorporation by Reference. (1) The following material is incorporated by
5 reference:

6 (a) "Form to File a Complaint", June 2021~~[January 2014]~~; and

7 (b) "Unlicensed Activity Report", June 2021~~[January 2014]~~.

8 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
9 law, at the Department of Professional Licensing, 500 Mero Street, Frankfort, KY
10 40601.~~[Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Ken-~~
11 ~~tucky 40601,], Monday through Friday, 8:00 a.m. to 4:30 p.m.]~~ The board's web site ad-
12 dress is: <https://bmt.ky.gov/>.

201 KAR 42:050

APPROVED BY AGENCY:

A handwritten signature in cursive script that reads "Brandy Madding". The ink is dark and the signature is written on a light background.

Brandy Madding, LMT, Chair
Board of Licensure for Massage Therapy

Date: September 13, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 8:00 AM EST on November 29, 2021, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:

<https://us02web.zoom.us/j/85834511709?pwd=ZENzSmp5Q0MyQS9GK01vcFpCTjJVQT09>
Password: 270127

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 511232

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=511232>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 858 3451 1709

Password: 270127

SIP: 85834511709@zoomcrc.com

Password: 270127

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (November 18), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM EST on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Leah Cooper Boggs
Title: General Counsel, Department of Professional Licensing
Address: 500 Mero Street 237 CW
Phone: (502) 782-0562 (office)
Phone: (502) 352-8095 (cell)
Fax: (502) 564-3969
Email: LBoggs@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 42:050

Contact Person: Leah Cooper Boggs

Phone: (502) 782-0562 (office)

Phone Number: 502-352-8095 (cell)

Email: lboggs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the procedure for filing a complaint or unlicensed activity report, how the complaint will be handled, and how discipline will be imposed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify how to file a complaint or an unlicensed activity report, and how they will be processed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies how to file a complaint or unlicensed activity report and they will be processed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(d).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board and those individuals who are practicing without a license.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. It only simplifies and clarifies the process for filing a complaint or unlicensed activity report, how they will be handled, and how discipline will be imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): It will assist the general public and other entities in filing complaints and unlicensed activity reports against licensees.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 201 KAR 42:050

Contact Person: Leah Cooper Boggs

Phone: (502) 782-0562 (office)

Phone Number: 502-352-8095 (cell)

Email: lboggs@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

Regulation No. 201 KAR 42:050

Contact Person: Leah Cooper Boggs
Phone: (502) 782-0562 (office)
Phone Number: 502-352-8095 (cell)
Email: lboggs@ky.gov

“Form to File a Complaint,” June 2021, is a three (3) page form used by anyone wishing to file a complaint against a licensee of the Board. It amends the “Form to File a Complaint,” 01/2011. The proposed amendments to this form update the contact information for the Board and the revision date.

“Unlicensed Activity Report,” June 2021, is a three (3) page form used by anyone wishing to notify the Board of unlicensed activity. The proposed amendments to this form update the contact information of the Board and the revision date.